

1 than merely reciting "intended use", instead defines the essential nature and operational
2 characteristics of each of the detector and controller. Accordingly, it is urged that the
3 language properly limits the scope of these elements and provides a basis for distinguishing
4 over the prior art. Paragraph 10 further observes that "Applicant has not invoked 35 U.S.C.
5 112, sixth paragraph". Although Applicant had not thought this to be necessary,
6 nevertheless, it is herein proposed to amend the claims to recite "means", i.e., invoke 35
7 U.S.C. 112 (6). It is courteously requested that the amendments be entered to place the
8 application in condition for allowance or better condition for appeal.

9 The present invention relates to recirculating decorative water fountains and
10 particularly to the resolution of a problem associated with existing fountains. That is, if the
11 tub water falls below a certain level, it is desirable to disable the pump to prevent it from
12 running dry. This action can cause water within the system, e.g., pipe, plenum, etc., to drain
13 back into the tub thus raising the water level and possibly turning the pump back on. This
14 sequence can create a hunting situation in which the pump continues to cycle on and off. To
15 avoid this situation, applicant herein has recognized the advantage of detecting two different
16 water levels, i.e., (1) detecting when the tub water level is below a low mark and (2) detecting
17 when the tub water level is above a high mark. By detecting these two distinct water level
18 conditions, systems in accordance with the invention can avoid the aforementioned hunting
19 situation.

20 Applicant's independent claims 1, 20, and 28 are all directed to a water flowing
21 apparatus including a pump and a reservoir and all recite controller means for switching the
22 pump off in response to the water level in the reservoir being less than a first height mark and
23 for preventing resumption of pump operation unless the water level exceeds a second height
24 mark greater than the first height mark.

25 It is urged that applicant's recitation (e.g., claim 20) of a detector means for detecting
26 liquid level and a controller means for switching the pump off when the detected level falls
27 below a first height mark and for preventing the resumption of pump operation until the
28 detected level rises above a second height mark patentably distinguishes the invention over

1 the Bear teachings. The Examiner comments that the Bear sensor will "inherently have some
2 degree of hysteresis" but provides no evidentiary support. Regardless, even if Bear did
3 exhibit some hysteresis, he does not suggest detecting and responding to two distinct water
4 level condition to turn the pump on and off. It is thus urged that Bear is no more relevant than
5 systems mentioned by Applicant in which a hunting, or cyclic on-off, situation will occur.

6 Applicant acknowledges that even if the quoted "intended use language" is given
7 patentable weight, the Office Action nevertheless rejects the claims, in paragraphs 8 and 9,
8 based in part on the newly cited Hotine patent. The Office Action comments that "Hotine
9 discloses a detector 26 to sense the low level of water in well 11 and a detector 29 to sense
10 the high level of water in well 11."

11 The Hotine patent relates to a Fluent Material Level Control System for pumping water
12 from well 11 to an open storage tank 15. Water enters the well 11 from the surrounding earth
13 and is pumped through pipe 13 by pump 14. A "low" level sensor 26 and a "high" level
14 sensor 29 in well 11 cooperate with low and high level sensors 39, 37 in tank 15 to determine
15 when water is to be transferred from the well 11 to the tank 15.

16 It is urged that the Hotine fluent material control system arises from a substantially
17 different art than the decorative fountains of the type discussed by Ting, Nash, and Applicant
18 herein. Neither Ting nor Nash recognizes the significant problem addressed by Applicant of
19 how, in a decorative water fountain, to avoid running the pump dry and also avoid creating a
20 hunting, or cyclic on-off, situation as water in the system periodically drains back into the
21 reservoir. Applicant has recognized and solved a problem which has not heretofore been
22 recognized in the decorative fountain art. Except via the impermissible use of hindsight,
23 there is nothing in the Ting or Nash patents which would suggest to a person of ordinary skill
24 in the decorative fountain art to seek a solution, for an unrecognized problem from the fluent
25 material control technology.

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1 In view of the foregoing, it is urged that independent claims 1, 20, and 29 patentably
2 distinguish the invention (along with dependent claims 2-19, 21-27, and 29-32) and favorable
3 reconsideration is courteously requested.

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5 Respectfully submitted,

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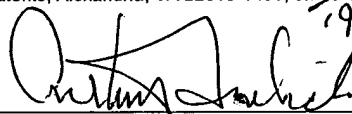
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